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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,167	07/03/2006	Franck Landrieve	5310-09000	3939

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EXAMINER	
LAU, TUNG S	

ART UNIT	PAPER NUMBER
2863	

MAIL DATE	DELIVERY MODE
10/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/551,167	LANDRIEVE, FRANCK	
	Examiner	Art Unit	
	Tung S. Lau	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 September 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07/13/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Preliminary Amendment

1. Preliminary Amendment filed on 09/27/2005 noted by the examiner.

Drawings Objection

2. The drawings are objected to under 37 CFR 1.84 (o)(n) which requires legends on drawings and labeled representations are used must be adequately identified in the specification, in figure 2, the generic blocks 6, 18, 17, in figure 4, the generic blocks 21, 22, 23, 24, 20, 34, 6, 27, 26, 28, 33, 32, 31, 7 and 30 should be provided with descriptive labels to avoid confusion (e.g. software protocol, transmitter, frequency hopper, receiver, etc), correction is required.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 07/13/2006 (8 pages, see attachment) was received. The submission is in compliance with the provisions of 37 CFR 1.97, 1.98. Accordingly, the information disclosure statement is being considered by the examiner.

The information disclosure statement filed 07/13/2006 (5 pages, see attachment) fails to comply with the provisions of 37 CFR 1.98 (a)(2) which required a legible copy. The cited document is missing from the file, namely NPL section number 13 and 14.

The information disclosure statement filed 07/13/2006 (5 pages, see attachment) fails to fully comply with 37 CFR 1.98(a)(3) because it does not include a concise

explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from applicant's specification or incorporated therein. See Item in the NPL section number 3 and 12. It has been placed in the application file, but the information referred to therein has not been considered.

The information disclosure statement filed 4-7-2003 has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any resubmission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 C(1).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7, 8, 9, 10, 11, 14, 15 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, Jr. et al. (U.S. Patent 6,327,220, Date of Patent Dec. 4, 2001).

Regarding claim 1:

Miller describes a portable measuring instrument (fig. 1, , unit 11), particularly for use in sport (fig. 1), comprising: a housing (fig. 1, unit 11) comprising: a sensor (fig. 1, unit 12); a receiver (fig. 1, unit 12); a transmitter (fig. 1, unit 13); and a processing unit (fig. 1, unit 14, 16); wherein the housing is adapted to transmit signals coming from the sensor to the housing intended to be worn by a user (fig. 1, unit 11), and wherein the housing functions as a relay by receiving signals coming from a remote detector intended to be worn by a user (col. 2, lines 14-42) and retransmitting these signals to the housing (fig. 1, unit 11, 50, 12, 13).

Regarding claim 6, Miller further describes secondary signal encoding a measurement signal (col. 5, lines 31-52) and a secondary identification code (col. 5, lines 31-52, transmit alarm).

Regarding claim 7, Miller further describes remote display comprising a display screen (fig. 1, unit 17), a secondary receiver (fig. 1, unit 50).

Regarding claim 8, Miller further describes secondary processing stage (fig. 1, unit 15) able to identify a secondary signal according to a secondary identification code inserted in a frame of the secondary signal (fig. 1, unit 11, signal to 50, col. 4, lines 45-62, detect which signal come from in the pool area with different users).

Regarding claim 9, Miller further describes a sensor (fig. 1, unit 12), a primary transmitter (fig. 1, unit 13).

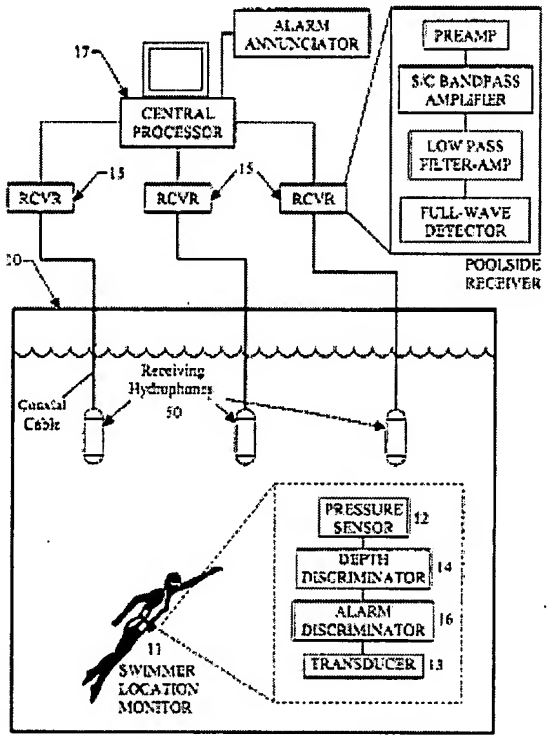

Figure 1

Regarding claim 10, Miller further describes wherein the detector comprises a processing stage (fig. 1, unit 14, 16) able to provide a primary signal encoding a measurement signal of the sensor and a primary identification code (fig. 1, unit 13, col. 4, lines 45-62, detect which signal come from in the pool area with different users)

Regarding claim 11, Miller further describes detachable fixing components (fig. 1, unit 11).

Regarding claim 14, Miller further describes a sensor (fig. 1, unit 12) and a primary transmitter (fig. 1, unit 13).

Regarding claim 15, Miller further describes wherein the detector comprises a processing stage (fig. 1, unit 12-16) able to provide a primary signal encoding a measurement signal of the sensor and a primary identification code (col. 4, lines 45-62, detect which signal come from in the pool area with different users).

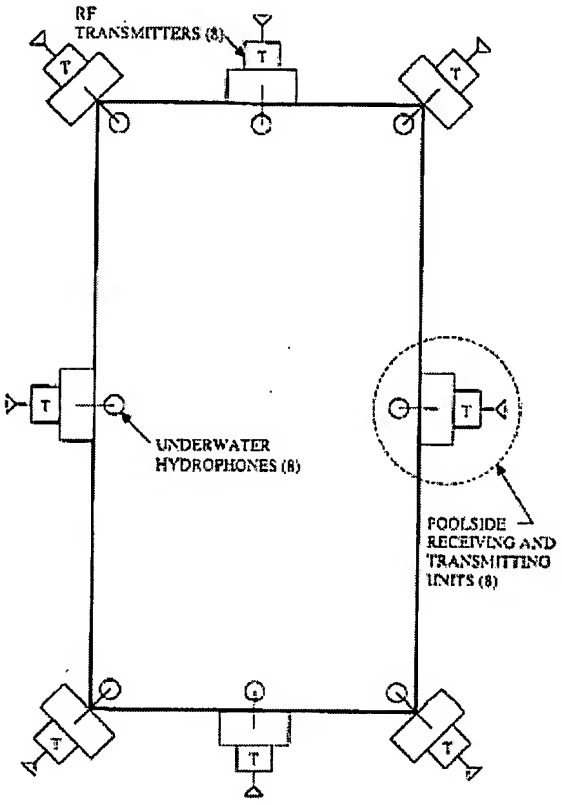

Figure 2

Regarding claim 4, Miller further describes a display screen (fig. 1, unit 17).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill

in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

a. Claims 16, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable Miller, Jr. et al. (U.S. Patent 6,327,220).

Regarding claim 16, Miller further describes fixing directly on the user and on a part of the user's equipment such as the frame of a cycle (fig. 1, unit 11, swimmer).

Miller does not describe fixing display directly on the user. Miller does show the display (fig. 1, unit 17), but it would have been obvious to one having ordinary skill in the art at the time the invention was made to fix display directly on the user since it has been held that rearranging parts of an invention involves only routine skill in the art (In re Japikse, 86 USPQ 70 C (CCPA 1950), in order to have flexibility on a system to view the result anywhere by anyone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller to have the fixing display directly on the user in order to have flexibility on a system to view the result anywhere by anyone.

Regarding claim 12, Miller further describes fixing directly on the user and on a part of the user's equipment such as the frame of a cycle (fig. 1, unit 11, swimmer).

Miller does not describe fixing display directly on the user. Miller does show the display (fig. 1, unit 17), but it would have been obvious to one having ordinary

skill in the art at the time the invention was made to fix display directly on the user since it has been held that rearranging parts of an invention involves only routine skill in the art (In re Japikse, 86 USPQ 70 C (CCPA 1950), in order to have flexibility on a system to view the result anywhere by anyone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller to have the fixing display directly on the user in order to have flexibility on a system to view the result anywhere by anyone.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. I , 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

b. Claims 2, 3, 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable Miller, Jr. et al. (U.S. Patent 6,327,220) in view of Parker et al. (U.S. Patent 6,997,882).

Regarding claim 2:

Miller describes an instrument including the subject matter discussed above except an accelerometer.

Parker describes using an accelerometer, in order to enhance subject monitoring condition for better detection (col. 2, lines 37-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller to have the using an accelerometer taught by Parker in order to enhance subject monitoring condition for better detection.

Regarding claim 3:

Miller describes an instrument including the subject matter discussed above except an accelerometer and a pedometer.

Parker describes using an accelerometer, in order to enhance subject monitoring condition for better detection (col. 2, lines 37-56), and pedometer in order to have a better detection by detecting an enhance information by the subject such as distance travelled, and energy expenditure (col. 2-3, lines 57-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller to have the accelerometer and a pedometer taught by Parker in order to enhance subject monitoring condition for better detection.

Regarding claim 5:

Miller describes an instrument including the subject matter discussed above except a pedometer, display directly on the user.

Miller does not describe fixing display directly on the user and a pedometer. Miller does show the display (fig. 1, unit 17), but it would have been obvious to one having ordinary skill in the art at the time the invention was made to fix display directly on the user since it has been held that rearranging parts of an invention involves only routine skill in the art (In re Japikse, 86 USPQ 70 C (CCPA 1950), in order to have flexibility on a system to view the result any where by anyone.

Parker describes pedometer in order to have a better detection by detecting an enhance information by the subject such as distance travelled, and energy expenditure (col. 2-3, lines 57-3),

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller to have the fixing display directly on the user in order to have flexibility on a system to view the result any where by anyone, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller to have a pedometer taught by Parker in order to enhance subject monitoring condition for better detection.

Regarding claim 13: Miller further describes the processing unit is able to provide a secondary signal encoding a measurement signal and a secondary identification code (fig. 1, unit 11, signal to 50, col. 4, lines 45-62, detect which signal come from in the pool area with different users).

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. I , 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Miller and Parker are analogous art because they try to solve the same problem, detecting subject movement condition for sport application.

Contact information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S. Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tung S. Lau
AU 2863, Patent examiner
September 6, 2007